DOCUMENT RESUME

ED 381 444 SO 024 719

AUTHOR Chamberlain, Elizabeth
TITLE Power, Consent, and Adolescent Sexual Harassment.
PUB DATE 94
NOTE 22p.; Paper presented at the Meeting of the Northeastern Educational Research Association (Ellenville, NY, October 1994).
PUB TYPE Information Analyses (070) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Adolescents; Anger; *Civil Rights; *Educational Discrimination; Equal Education; Fear; Females; Feminism; Intermediate Grades; Junior High Schools; Middle Schools; Power Structure; Public Schools; Sex; *Sex Bias; Sex Stereotypes; *Sexual Harassment; Social Bias
IDENTIFIERS Case Law; Consent; Power

ABSTRACT

This paper reviews the literature and case law related to the issue of sexual harassment of females and specifically focuses on the adolescent female in the public middle school setting. The controversial thesis statement the researcher explored was: "sexual harassment is a manifestation of the ubiquitous power imbalance between men and women that is an essential part of the institution of compulsory heterosexuality. Any and all attempts, by laws, policies, or educational programs to eradicate sexual harassment will remain largely necessary but not sufficient until the root cause, power imbalance, is recognized." The study: (1) analyzes the relevant notions of power; (2) describes the relationship between gender and power; (3) considers the characteristics of the legal view of sexual harassment, especially within a school setting; and (4) examines sexual harassment in schools in terms of power. The power differential seen in schools is a reflection of the notion of power in existence in the larger society. (EH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

SO

ED 381 444

Power, Consent, and Adolescent Sexual Harassment

by
Elizabeth Chamberlain

University of New Hampshire

Presented to Northeastern Educational Research Association
Ellenville, New York
October 1994

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it

☐ Minor changes have been made to improve reproduction quality

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
ELIZABETH CHAMBERLAIN

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

SO 024 719

BEST COPY AVAILABLE

The educational system of a given society reflects that social system, and at the same time it is the main force perpetuating it. It may be perceived as the most powerful means of social control to which individuals must submit, and as one of the most universal models of social relationships to which they will refer later.

Michael Crozier
The Bureaucratic Phenomenon

This quotation encapsulates my concern about the social context, the nature of social relationships, and the assumptions about power which characterize the school experience of our nation's children. The way "things are" in school not only verifies the norms of some larger culture, but also sets in stone the "way things will be/should be" for the millions of students and future adult decision makers who experience our schools. It is critical, then, to examine the construct of power, especially as it operates within our public schools, defining interpersonal and intrapersonal relationships, arbitrating decisions, and precluding or promoting academic and personal aspirations. One cannot examine power without also examining power in relation to gender (Connell, 1987).

As I have become involved in examining the issue and occurrence of sexual harassment among students in a public middle school, I am increasingly aware of subtle and not so subtle power differentials among what appear to be "peers". Over and over, strong-voiced female students appear to become confused, unsure, and silent when they are the targets of such abuse, even though, on the surface, such female students appear to adults as quite competent and articulate. All my study has led me to the following thesis statement which is controversial enough to warrant further explanation and exploration. To wit:

Sexual harassment is a manifestation of the ubiquitous power imbalance between men and women which is an essential part of the institution of compulsory heterosexuality. Any and all attempts, by laws, policies, or educational programs to eradicate sexual harassment will remain largely necessary but not sufficient until the root cause, power imbalance, is rec ognized.

First, I will analyze relevant notions of power, describe the relationship between gender and power, and then consider the characteristics of the legal

view of sexual harassment, especially within a school setting. Finally, I will examine sexual harassment in schools in terms of power.

Power and gender-related issues are not generally examined by educators. Nyberg suggests that this lack of reflection is based on educators disdaining the construct of power as negative and not appropriate for educators' consideration (Nyberg, 1981). Houston, however, more astutely claims that schools eschew such consideration as to do so would mean attending to their own practices within schools (Houston, 1981, p. 26). These include sex inequality in quality of teacher-student interactions (Sadker & Sadker, 1982; Miller, 1993), inequality in construction and implementation of curriculum (Pollard, 1993; Burstyn, 1993), staffing patterns (Shakeshaft, 1989), and school policies which set norms, climate and expectations (Stein, 1993; Sleeter, 1993; Shakeshaft, 1989).

There appears to be reasons to believe that an examination of power and gender equity in all these areas may now become a priority on the educational agenda as schools undertake restructuring, spurned by growing public criticism of their adequacy and efficacy for the twenty-first century (Sizer, 1984; Beck & Murphy, 1993). Three separate but related topics are recurring themes in the literature addressing areas in which schools must become more responsible: multiculuralism, technological competence, and sexual harassment. Although issues of power and sexual discrimination comprise root causes in all three areas, I would like to focus on the inequities of power and discrimination as contributors to sexual harassment among adolescents within a public school setting.

Monica Sherer, writing in the University of Pennsylvania Law Review, is one of the few writers to direct attention to the issue of power and its' influence in the larger culture as we examine the incidence of sexual harassment among adolescents in school settings. She notes, " One aspect that adult observers tend to overlook is the difference in power between the parties involved" (Sherer, 1994, p. 2131). The possibility that there, indeed, exists power differentials among 'peers' mandates that we examine the notion of power as it exists in our larger culture, influencing our behavior without our consciousness of the fact.

<u>The construct of power</u>

The very word 'power' has acquired a rather negative connotation, making an investigation or even a discussion among educators an uncomfortable process. Recently I surveyed a graduate class in public school administration, asking them to draw the first five symbols of 'power' that came immediately to mind upon hearing the word. Responses could be categorized by one of four sorts of representation: Power as privilege--money, plush offices, big cars, Power as force--guns, clenched fists, summa wrestlers, Power as authority--judges' gavel, badges, and Power as energy--electricity, flowing water, wind. Oddly enough, none of these educators chose to depict a Baconion idea of knowledge as power. In this group and in other informal discussions, participants, when pressed to articulate their ideas about power, appear uncomfortable, and often quote the famous statement credited to Lord Acton. Writing in 1887, he penned the maxim: "Power tends to corrupt and absolute power corrupts absolutely" (*Essays on Freedom and Power*, p. 364). Later, G. B. Shaw reminded us that "Power does not corrupt men [sic]; fools, however, if they get into a position of power, corrupt power" (*The Viking Book of Aphorisms*, p. 301). Jean Baker Miller seems to concur with Shaw, writing about power,"Like all concepts and actions of a dominant group, "power" may have been distorted and skewed. It has rested almost solely in the hands of people who have lived with a constant need to maintain an irrational dominance; and in their hands it has acquired overtones of tyranny" (Miller, 1976, p. 115).

Webster's Unabridged Dictionary succinctly defines 'power' as " ability to do; capacity to act; capability of performing or producing..." (2nd Edition, p. 1412). [It is interesting to note the way the same dictionary defines 'agency'--"active force; action; power' (p.35).] Such a simplistic definition is far from adequate. Miller, understanding the cultural definition of 'power', writes that "Power has generally meant the ability to advance oneself and , simultaneously, to control, limit, and if possible, destroy the power of others. That is, power, so far, has had at least two components: power *for* oneself and power *over* others" (Miller, 1976, p. 116). The intertwining of these two components is evident in most of the organizational theories which deal with the issue of power and/or authority within schools.

David Nyberg (1981) examines power within the public education framework, and offers a contrast to the more traditional organizational

management view of power. Yet, the basic assumptions listed above still seem to apply, with the addition of some assumptions concerning the role of consent.

Nyberg places power at the center of relationships, claiming,"power is inherent in social life....Whenever at least two people are related in some way relevant to at least one intended action, power is present as a facet of that relationship" (1981, p. 40). Eschewing any discussion of the role of gender, race, class or other descriptors, Nyberg ascribes greater power to the one who can influence another to participate in his or her plan of action, "The person who has a plan and someone else who can help carry it out is more powerful than the person who has only a plan" (p. 45). Thus, he eliminates from consideration, the position vis a vis power of one who has no plan, and no expectations nor encouragement to formulate a plan. This situation, I believe, more accurately describes the actuality for oppressed people, such as female students in our public schools. Still, his theory bears examination.

Nyberg lists "forms" of power rather than "sources", and these vary somewhat from organizational theories. The first of these is "force" . This, he characterizes as primitive, unstable, costly to the power-wielder, and inefficient as force, or threat of force, requires constant maintenance and produces hostility and rebellion. The second form of power is named "fiction". This is the power of the story-teller, in whatever form, who can, by words and images, more than brute force, convince people to believe and act in support of the story-teller's plan. Although Nyberg insists that "fiction" as he explains it is significantly different from deception or propaganda, the chance for a power-wielder to create a convincing fiction which is not in the best interests of others remains. His description of fiction also assumes that such fiction is an intentional act; he does not consider the culturally embedded fictions which operate constantly without anyone's personal intent.

A third form of power according to Nyberg, is "finance". This is quite similar to the "reward power" cited by other theorists. Whether actual money, or privilege, or position is the sought goal, this form of power seeks to purchase consent, even cheerful consent from others. Nyberg discusses the use of finance as teachers routinely offer grades, stickers, or recognition for students' compliance with their lesson plans. Again, the consent so gained appears to be voluntary, informed, and conscious, and in response to some intended reward.

His fourth form of power is called "fealty". The highest and most acceptable form of power, "fealty" requires faithfulness, loyalty, trust, and

mutuality. In this form, power needs no enforcement as consent is assumed and the plan represents the will of all parties. This form may accompany love, or may be merged with love, but remains a form of power. Thus, according to Nyberg, the common fallacy that love and power are antithetical is exposed. Although based on reciprocal, cooperative, mutual commitment, fealty, is not love, but a power construct. As such, Nyberg believes it is the result or an adjunct of another form of power, such as fiction or finance. He stresses that fealty is often seen in professional associations, clubs, or groups formed for specific tasks or purposes. As a form of power, fealty is stable, relatively non-coercive, and effective, but it is not to be seen as a means for individual happiness or well-being (pp. 70-83).

Nyberg's theory is unique in his consideration of the role and nature of consent in power. Claiming that "The withdrawal of consent is the power most feared by the powerful", he catalogs a continuum of kinds of consent (p. 46). The continuum is arranged on a scale according to the degree of voluntariness and quanity and quality of information available to the consenter. Beginning with the least amount of choice and/or information is the consent Nyberg names "acquiescence under threat of sanction". Although widely used in education in the form of detentions, grades, or humiliation, this sort of consent requires constant enforcement, according to Nyberg. Thus it is expensive and unstable, liable to disappear if not constantly maintained. Compliance based on partial or slanted information, the second form of consent, is the hallmark of indoctrination or deceit. A third, and common form of consent is based on indifference, habit, or apathy. This sort of consent is rampant in schools and other organizations where the plan is followed without any reflection on the part of the followers who are simply not invested nor engaged in the process.

Conformity to custom constitutes Nyberg's fourth form of consent. He cites it as perhaps the most common, but does not examine the sorts of customs which are so insidious in our culture to which conformity is so automatically given. Neither does he consider whether, indeed, cultural customs can really be said to constitute a plan as there is not an obvious planner. At the highest end of the consent continuum is commitment through informed judgment. While the lesser forms of consent may be used to impose socialization upon children, informed consent represents the ideal for educators (pp. 46-54). It requires that consenters use critical thinking skills, reflection, and an ability to synthesize information to make informed decisions. The assumption is that only if one is

able to give informed consent, can one thoughtfully withdraw consent. Although Nyberg's claims for the power inherent in the ability to withdraw consent are strong, there appears to be little hope for those who are unaware that they are, indeed, consenting to anyone's plan. In fact, much social interaction appears to be based on custom or cultural norms which do not represent any one individual's plan. Hence, notions about consent flounder without any identified plan or planner.

Houston's (1981) critique of Nyberg's theory highlights the limitations of his thesis that the withdrawal of consent is the height of power. She points out that Nyberg fails to distinguish what constitutes a field of consent for individuals and what demands a field of consent for a group. Using the case of heterosexuality as a case in point, she illustrates that even if an individual woman or group of women withhold their consent to this 'plan', by refusing to marry, by choosing to live in a community of women, even by actively advocating for gay and lesbian rights, the 'plan' remains powerful, capable of enforcing the cultural norms, even punishing those who withhold consent.

Further, Houston notes contradictions in Nyberg's ideal of fealty. "...it is relatively easy to get people mutually committed to plans that undermine the interests of one of the parties" (Houston, p. 22) The entire planner-less plan for heterosexuality represents such a circumstance as it continues to be the over-arching cultural norm which contributes to the lack of power for women. To withdraw consent from such a norm involves a much larger-scale political action than comes within the parameters of Nyberg's theory. Understanding this is, I believe, key as we examine the issue of power differential within the framework of sexual harassment.

One other power theorist, Michel Foucault, warrants consideration as we consider the power dynamics involved in sexual harassment. Foucault (1979) would agree with Nyberg that power is present in all relationships and is a central ubiquitous cause for action within relationships. But Foucault's notion of "disciplinary power" would contradict Nyberg's assertion that power gained by force is costly and inefficient. In fact, by the production of "docile bodies", individuals become agents for enforcing the power dictates, thus relieving the power-originator of any costs or effort.

The essence of Foucault's "disciplinary society" centers on the model prison Jeremy Bentham calls the Panopticon. The very structure of this prison separates and isolates each inmate, yet keeps each one constantly visible to a

centrally located guard. Soon, under constant awareness and fear of scrutiny, each person guards his or her own behavior, thus perpetuating the conditions of control by automatically self-imposing discipline. According to Foucault, the Panopticon effect can be seen throughout modern society as he notes, "prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?" (p. 228).

Although Foucault, himself, ignores any difference between genders, Bartky (1990) asserts that women are particularly subject to this sort of self-disciplining, and produce even more "docile bodies" than men. Indeed, for Bartky, the fact that Foucault does not differentiate the experience of self-discipline of men and women, illustrates even more poignantly the lack of awareness of the inherent silence and powerlessness of women in all male-dominated explanations of power. She writes," Hence, even though a liberatory note is sounded in Foucault's critique of power, his analysis as a whole reproduces that sexism which is endemic throughout Western political theory" (Bartky, 1990, p. 65).

Bartky's analysis of Foucault's idea of self-disciplinary power and her insight relating this concept to women focuses on the very heart of the nature of the power differential operating in sexual harassment. The force and comprehensiveness of disciplinary practices which women have inculcated into our bodies need to be understood to realize the impact that sexually harassing comments inflict on women. Bartky emphasizes both the anonymity and the wide dispersion of disciplinary power on women.

In response to "the gaze", women restrict their movements, employ only certain gestures, starve themselves to meet unreasonable standards for thinness, spend immeasurable time, money and energy on hair styling, hair removal, nail sculpturing, make-up, and fashions which are neither comfortable nor practical. Even so, Bartky claims, women cannot ever be acceptable to the "gaze", neither from without nor within. "The disciplinary project of femininity is a 'set-up' : It requires such radical and extensive measures of bodily transformation that virtually every woman who gives herself to it is destined in some degree to fail. Thus, a measure of shame is added to a woman's sense that the body she inhabits is deficient...." (p. 72). I believe it is this element of shame, this acknowledgment of some degree of failure to achieve an acceptable level of femininity, that provides the context in which women of all ages experience sexually harassing comments.

The lack of a formal structure, a recognizable power-wielder, or stated directives regarding women "creates the impression that the production of femininity is either entirely voluntary or natural" (p.75). Women cannot simply withdraw their consent from this plan--it is without any one person's intent or plan, and the source of the power, alas, resides hidden within the individual against whom it is used. Insidious and anonymous, the tight control defining normative femininity becomes centered on women's bodies-- our appearance, not function or health, and our sexuality, presumed to be heterosexuality. That the "gaze" is male is quite certain. Bartky boldly calls women's self-surveillance "a form of obedience to patriarchy" (p. 80). However, she asserts that as more women gain political and economic power, and begin claiming the right to define our own sexuality, the patriarchal gaze becomes more overt in an attempt to punish and force compliance. Ironically, as the force of the gaze becomes more tangible, the result is resistance, not passive compliance. Although Bartky does not envision that women will soon be able to resist the entire imposition of normative femininity, she does note pockets of resistance, areas of changing norms, and a small trend in popular literature for women to re-vision our own bodies. Just being able to locate the source of the gaze and name it as powerful allows us to contemplate how to withdraw our consent from it.

Sexuality, gender, and power

R. W. Connell (1987), is one of the few male theorists who link gender and power as two factors which influence and interact with each other. He calls gender " a historically constructed pattern of power relations between men and women" (p. 99), and cites many examples of unequal, gender-based power plays within households, male-dominated institutions, and businesses. Having defined power as a "balance of advantage or an inequality of resources...(p. 107), he concludes that although some men are sometimes in situations where they seem to have less power than some women, men, on the whole, have greater power. These two notions, gender and power, are interactive. Power is a function of gender (men have it; women do not) and gender is a function of power ("womanly" behavior is in response to men's power which, in turn, affects their behavior). Although Connell uses examples of male power which relate to issues of sexuality such as rape or consent to marry, he avoids direct discussion of sexuality within gender-power inequities.

Feminist theorists present their claims much more boldly, clearly linking sexuality with power and gender. Marilyn Frye writes, "As long as the culture is male-dominated, misogynist, and characterized by compulsory heterosexuality for women, most females will have most of their sexual experience in relationships in which, on balance, they have considerably less social, economic, and physical power than their partners and in a context of myth and dogma that would impose male-affirming and female-degrading meanings upon their sexual acts and contacts" (Frye, 1992, p. 45). The hallmark of male dominance/power over women is unrestricted access--economically, emotionally, and physically (Rich in Jagger & Rothenberg, 1993, p. 489).

Women have been strongly exhorted to believe (Nyberg's fiction) and act as though our bodies must be maintained according to male standards of beauty and sexual appeal (Bartky, 1990; Frye, 1992; Fraser, 1989). This prevailing cultural myth that women are appropriate sexual objects for male attention not only gives women the message regarding our subordinate sexual-availability and obligation, but also gives males the message that access is rightfully theirs and that terms of access need not be negotiated with any particular female beyond some measure of "mannerly" behavior. Defining just what constitutes such "mannerly" behavior remains ambiguous as explorations of the definition of sexual harassment illustrate. Examining our sexuality and our sexual behaviors in a public sphere, such as public schools, gives new meaning to the slogan "the personal is political" According to Bartky this slogan means "that the subordination of women by men is pervasive, that it orders the relationship of the sexes in every area of life, that a sexual politics of domination is as much in evidence in the private spheres of the family, ordinary social life, and sexuality as in the traditionally public spheres of government and the economy" (Bartky, 1990, p. 45). There does not appear to be clear delineation between "sexual object "and "sexual partner".

Sex, power, and sexual harassment

Catharine MacKinnon, perhaps the most prominent feminist legal theorist, seeks to unravel the complex issue of sexual harassment, exposing the social, political, and cultural messages embedded within harassment. She writes," If anatomy is not destiny as a biological matter, it can certainly appear all-inclusive as a social matter. Women learn early to be afraid that men will not be attracted to them, for they will then have no future; they also learn early to be

afraid that men will be attracted to them, for they may then also have no future" (MacKinnon, 1979, p. 217). Most of MacKinnon's work to date has focused on sexual harassment of adult women in the workplace. Indeed, the case law which is accumulating almost exclusively involves adult working women, but this same case law is providing the background and impetus for decisions about sexual harassment which occurs in public schools and involves women who are minors. The reasoning and assumptions of this case law provide insight about the overall cultural notions regarding the status of women and bear review.

The law under which sexual harassment cases have been processed, forbids actions which unjustly discriminate against any class of people, and by discrimination, exclude people from participation or benefits. (See Appendix A)

As of 1974, no court had held that sexual harassment was sex discrimination; in fact, several had ruled that it was not. MacKinnon began her research with a central question, as she says,

"Many social practices imposed upon women because we are women are not considered by the law to be based on it has been legally unthinkable. As I came to analyze it, sexual harassment also appeared neither incidental nor tangential to women's inequality, but a crucial expression of it....Does sex discrimination doctrine embody a conception of sexuality, gender, and power that can even begin to touch their fused reality as women experience it? These remain my concerns" (MacKinnon, 1979, p. xi).

As MacKinnon began her research, she found no "systematic" studies of sexual harassment. She relied on seeking and treating as data, women's experiences. She explains,"Something worth knowing, uniquely appropriate to this investigation, and not adequately revealed in other ways can be found in such statements....When an outrage has been so long repressed, there will be no social codifications for its expression. Depending upon who is asking them, and how, victims may initially say (and believe) that they are not victims, so near is the denial to erasure" (p. xii). This is the sort of fiction power Nyberg alludes to, but with limited understanding. Ultimately, she claims, the commonalty of women's experience substantiates a dimension of the social reality of women as a sex, not merely an experience which happened to a series of individuals who happen to be female. This distinction remains critical as courts continue to need to be convinced that sexual harassment does, indeed, constitute sex discrimination.

MacKinnon meticulously reviews cases involving sexual harassment revealing that legally, as in other dimensions, sexual harassment is neither

straightforward nor easily grasped in a culture in which assigned/expected sex roles have rarely been reviewed concerning the implications of such roles in the relatively neutral arena of fair labor practices. The question of discrimination turns on whether harassment of women is exclusive to women. "An abuse that *can be* visited upon either gender or upon the same gender as that of the perpetrator--as sexual harassment can--cannot be treatment based on sex....Another approach focuses upon whether the requirement (for sexual behavior) *was in fact* imposed upon one gender, and not the other in the case at hand" (p. 58).

Confounding the issue is the contention that to interpret sexual harassment as discrimination violates an essential "private and personal" dimension of a relationship; one that is not subject to public scrutiny. MacKinnon draws the analogy that one could also say that racist remarks are personal and perhaps bad manners, but the law has clearly ruled such remarks in the workplace to be discrimination, and thus, prohibited by both the Equal Protection Clause of the 14th Amendment and by Title VII of the Civil Rights Act of 1964. The oft-repeated argument in cases in which the Courts have ruled against the woman (there were no cases of a male plaintiff) bringing charges of sexual harassment, has been that the behavior (which was not denied) constituted "natural" or "normal" male sexual behavior. MacKinnon summarizes, "Boundaries between personal life and work life, the natural and the cultural, are thereby interpenetrated and confounded in the same way that they have become inseparable in women's oppression....conceiving of sexual harassment as unequal treatment based on sex raises fundamental questions of the definitions of, and the relations between, gender, sexuality, and power" (p. 59).

The issue of what does constitute "normal" male sexuality remains unresolved, but in much dispute, legally. This is also, I believe, a key issue which confounds sexual harassment prevention programs within school settings. Clearly, sex roles shape behavior, and stereotyped behavior infuses our culture. Diana Russell argues that rape should be viewed not as deviance, but as "over conformity to the male sex role" (Russell, 1975, p. 260). Lionel Tiger, intending to excuse rather than criticize men, notes that "[it] is relatively 'normal' for males to seek sexual access to females who are their subordinates" (Tiger, 1969, p. 271). Prevailing norms for sexual behavior give the male the prerogative to initiate intimacy, allocating the greater power to the male. Ellen

Morgan describes this asymmetry as a function of gender inequality, "We have a situation in which the dominant male sexual culture aggrandizes the male ego whereas the subordinate female style damages the female ego. Sex means different things to women and men...." (Morgan, 1975, p. 112). MacKinnon claims the legally relevant content of the term sex, understood as gender difference, should focus upon it's social meaning more than upon any biological givens. The most salient determinants of sexuality...are organized in society, not fixed in " nature" (MacKinnon, 1979, p. 158).

Another tactic courts have used in hearing cases of sexual harassment has been to view it as personal injury under tort law. The problem with this, according to MacKinnon, is that tort law considers individual and compensable something which is basically social. In viewing sexual harassment in this way, she claims, judges have employed "disabling and cloying moralism" (p. 172). She warns that if sexual harassment is misconstrued under the auspices of the moral delicacy of women, courts will miss the point that sexual harassment is not an issue of right or wrong, but an "issue of power" (p. 173). Sexual harassment is not a moral infraction, but an act of coercion, often with severe economic penalties for the women involved. It is a way to hold women hostage to sexual submission. She continues, using the analogy that " Economic power is to sexual harassment as physical force is to rape" (p. 218).

Looking at rape, a most extreme case of sexual harassment, provides a useful framework for examining less obvious acts of harassment. Many writers have attempted to frame rape as an act of violence--not of sexual nature (Brownmiller, 1976; Griffin, 1977;). MacKinnon offers an interesting critique of Brownmiller's popular book, *Against Our Will: Men, Women and Rape*, and the lack of discussion regarding the role of consent. In this book, Brownmiller broke new ground discussing an almost taboo topic, but, it discusses rape as extreme violence far removed from everyday experiences of most readers. It never considers whether under conditions of male supremacy, the whole notion of any consent has real meaning for women in any sexual experience. "If consent is not normally given but taken, it makes no sense to define rape as different in kind. To do so sets women up to fail in accusations of rape when they cannot prove that this situation appears different from most heterosexual encounters" (MacKinnon, p. 298). This lack of distinction between normal and pathological male behavior has been a difficulty in getting convictions on rapists; rape has been seen as a natural expression of male sexual desires. Accused rapists

often go free, or women's complaints claimed to be unfounded because the rape is considered "normal" by the legal system. MacKinnon quotes one accused rapist of saying he had not used "any more force than is usual for males during the preliminaries" (p. 219). She points out that taking rape from the category of 'sexual' and putting it in the category of 'violence' allows people (such as males) to be against rape "without raising any questions about the extent to which the institution of heterosexuality has defined force as a normal part of "the preliminaries" (p. 219). Brownmiller's approach, and that of others who would separate violence from sexual when viewing rape, begs the central question, Do women *ever* have the chance, really, of considering whether they wish to have sexual relations or not?

MacKinnon objects to any attempt to divide actions, rape or sexual harassment, between sexuality and power issues as to do so disregards the inherent power imbalance of the social context in which both occur. She maintains that inequality is built into the social conceptions of male and female sexuality. Indeed, incidents of sexual harassment suggest that male sexual desire itself may be aroused by female vulnerability--a notion that is embedded in the culturally projected norm for femininity which includes an appearance of weakness or defenselessness. Just because episodes of harassment appear to involve commonplace behaviors, there remains little legal requirement to view harassment as being specifically a censurable action against women. She writes, "The problem is that the appearance of rape as similar to normal heterosexual encounters is not seen as an indictment of normal heterosexual encounters, but as a reason the behavior should be allowed....If unwanted sex imposed by a man upon a woman who is in no position to refuse only expresses the usual situation in unusually vivid terms, on what grounds should it be illegal?" (MacKinnon, p. 220).

However, viewing sexual harassment under the concept of discrimination keeps the sexual violation of women in full view of the social setting in which in happens. If sexual harassment illustrates one aspect of 'normal' relationships between the sexes, and such relationships are inherently unbalanced regarding power, then "the feelings and practices that emerge are not reasons that the practices should be allowed. They support and evidence the discrimination" (p. 220). Bold in her claim, MacKinnon asserts," Gender *is* a power division and sexuality is one sphere of its expression. One thing wrong with sexual harassment (and with rape) is that is eroticizes women's

subordination. It acts out and deepens the powerlessness of women as a gender, as *women* " (p. 221). Sex discrimination law can provide a framework which allows women to be viewed as both different and equal.

Sexual harassment in schools

Although sexual harassment is being analyzed and documented in the workplace, and legislation has been adopted in many instances on the federal and state level to protect adult women, the parameters of sexual harassment in other areas, such as schools, are still being defined. Reviews of recent developments in case law specifically addressing public schools are found primarily in law reviews and doctoral dissertations of law students.

As MacKinnon notes, the passage of Title VII of the Civil Rights Act of 1964 provided the starting point for litigation in cases of sexual harassment. The act's original focus was the protection of African-Americans, but was expanded in 1972 to include sex discrimination. Also in 1972, Congress passed the Equal Employment Opportunity Act (EEOA) and the Education Act Amendments. Title IX of the Education Amendments prohibited sex discrimination in any educational program or activity receiving federal funds. (See Appendix B)

Sexual harassment victims began suing under several laws, but Title IX was the principle vehicle. Hence the courts have viewed sexual harassment primarily under the auspices of sex discrimination. In the late seventies two conditions or forms of sexual harassment were recognized in the workplace, "Quid pro quo" harassment "occurs when submission to sexual conduct is made a condition of concrete employment benefits" (Strauss, 1993, p. 168) This form of harassment includes hiring and firing decisions, changes in pay, promotion, job duties, or job conditions based on acquiescence to sexual advances. In 1980, the EEOC issued guidelines that declared sexual harassment a violation of section 703 of Title VII, established criteria for determining when unwelcome conduct of a sexual nature constituted sexual harassment, defined the circumstances under which an employer may be held liable, and suggested affirmative actions for prevention in the workplace. The courts accepted these EEOC definitions and extended the definition of sexual harassment to include "hostile environment". This form of sexual harassment "unreasonably interferes with job performance or creates an environment that is intimidating,

hostile or offensive, even if it leads to no tangible or economic job consequences" (p. 168).

Finally, in 1986 the Supreme Court for the first time in *Meritor Savings Bank v. Vinson* addressed the issue of sexual harassment and established that sexual harassment is a form of sex discrimination actionable under section 703 of Title VII. Significantly, the Courts followed the EEOC guidelines and recognized both "quid pro quo" and "hostile environment" sexual harassment (Strauss, p. 169). Although the *Vinson* decision rested on the sexual advances being 'unwelcome', it did not address how 'welcomeness' of behavior should be determined. Nevertheless, businesses began instituting policies and programs of education for working adults. (See Appendix C).

A landmark case for public schools came in 1992 in *Franklin v. Gwinnett County Public Schools and William Prescott*. This case was presented under Title IX of the Education Act and involved sexual harassment of a high school student by a teacher. Noteworthy is the fact that the Supreme Court also found that a 'damage remedy' is available for an action brought to enforce Title IX. Until this case, no monetary damages had ever been connected with Title IX violations.

Peer sexual harassment in public schools

Franklin involved the unequal power between teacher and student. However, the arguments used in this case have been applied also to peer sexual harassment to some extent. The Office for Civil Rights (OCR) which is charged with enforcing Title IX maintains that peer sexual harassment is also prohibited by Title IX. The Supreme Court has not yet ruled on a case of peer sexual harassment. Two significant early cases of peer sexual harassment, both in Minnesota, have been brought through State courts using definitions for sexual harassment similar to those of the EEOC. In the first case, the charging party and the respondent school district arrived at a settlement in 1991, and the second case is still in the conciliation process as of late 1993.

Applying "quid pro quo" standards to peer sexual harassment forces the examination of power between students. The determination of "hostile environment" focuses attention on the fact that males and females experience the same circumstances differently.

To determine whether sexual harassment is sufficiently severe to create a hostile environment in the employment context, the courts generally use an

objective standard of a "reasonable person". However, "this standard can not be applied in a vacuum, and the context in which the alleged harassment took place must be considered. Furthermore, the victim's perspective and not stereotyped notions of acceptable behavior should be considered" (EEOC guidelines, cited in Strauss, p. 179).

In *Ellison v. Brady* the Court of Appeals for the Ninth Circuit rejected the "reasonable person" standard and adopted a "reasonable woman" standard. The majority opinion notes,

> "...reasonable woman primarily because we believe that sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women....By acknowledging and not trivializing the effects of sexual harassment on reasonable women, courts can work toward ensuring that neither men nor women have to run the gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living" (cited in Strauss, p. 179)

Of course, the dissenting opinion questioned the assumption that men and women might have differing "sensibilities".

Even using the standard of "reasonable woman", Carrie Hebert highlights three problems in addressing peer sexual harassment. First, "girls do not readily name the behavior as unwanted for they have become inured to it, secondly, sexual harassment passes as unremarkable in schools because the line between what constitutes normal male behavior and aberrant behavior is unclear....Finally, there must be a recognition of the natural (sic) flirtations and sexual interest that occurs between high school students that stops short of sexual harassment" (Hebert, 1989, p. 23).

Sherer catalogs some differences reported by male and female students who report experiencing sexual harassment in school. Males often perceive sexual harassment as flattery, even if unwanted, while females perceived sexual remarks as threatening and confusing. Males reported "talk about sex" titillating, while females reported it as intimidating, especially in a place where they want to be taken seriously. One female student reported to Sherer, "It reminds everyone present that I am first of all, a woman, and secondly, vulnerable" (Sherer, 1994, p. 2132). The survey conducted by the American Association of University Women (AAUW), "Hostile Hallways", confirms that peer sexual harassment is not only so common as to be ubiquitous, it affects females more adversely (AAUW, 1993, pp. 15-20). This survey found that of

the students who indicated they had experienced sexual harassment from peers the impact for girls was significantly greater in the following areas:

Reported result	Males	Females	
Not wanting to go to school	12%	33%	
Not wanting to talk in class	13%	32%	
Hard to pay attention in class	13%	28%	
Made a lower grade	6%	20%	
Made self-conscious	21%		52%
Felt embarrassed	36%	64%	
Loss of confidence	14%	43%	
Felt afraid	8%	39%	
Doubt about having a happy romantic relationship	12%	30%	
Avoided harasser	27%	69%	
Avoided certain areas of school	12%	34%	
Quit certain activities (sports,teams)	6%	17%	

Clearly, the presence of sexual harassment constitutes a hostile environment, especially for women. Donna Russell, attorney with the Boston, Massachusetts office of the Office of Civil Rights specializes in cases of sexual harassment in school settings. In a recent seminar given in a public middle school, she expounded on the concept of "third party hostile environment". Although not clearly articulated in case law yet, the concept acknowledges that one need not be the direct target of sexual harassment to suffer its consequences. Two males, for example, may be making vulgar, sexually explicit remarks or jokes to one another by mutual consent, but such an interchange can create a hostile environment for anyone else in the environment. Gestures, pictures, comments, stories, or any other display of a sexual nature need not even be heard or viewed by a third party to constitute a hostile presence in the overall environment.

Russell also explained that schools are held to a higher standard for prevention of hostile environment. Students are compelled to attend school; therefore, schools are more accountable for not only prohibiting sexual harassment, but also for providing an environment which prevents such harassment.

Schools, acting on this need to sustain a non-hostile environment, typically incorporate programs to educate students about what actions are harmful to others and therefore, not allowed. Punishments, censures, counseling, parent information programs, heightened awareness of environmental issues, sensitivity to the potentially hurtful consequences to casual remarks or actions are all at the center of such programs. Model policies include recognition of the existence of sexually harassing words and actions and endeavor to "empower" the target of such to stop them. Procedures for reporting incidents and counseling for parents and students are included in such policies. In addition to the educational and procedural components, policies outline consequences or punishments for offenders. All this may be commendable and necessary as a starting point, but fails to address the underlying cause and context for sexual harassment. Attending to sexual harassment under the provisions of "hostile environment", but ignoring the "quid pro quo" framework leaves unexamined the central issue which is unequal power between males and females.

Sherer recognizes that "The elimination of sexual harassment hinges on a societal transformation where the barriers of age-old stereotypes and prejudices are broken down" Sherer, 1994, p. 2163). She still, however, proposes that the law and public institutions, while not able to change mindsets, can influence behavior. She offers no proposal for examining basic power inequities, but suggests that other agencies (besides the law) need to do so.

Fortunately, other feminists are examining the existing patriarchal power structure and proposing sweeping changes. Nel Noddings noting that "The structures of this (male) dominance pervade our entire society, and they do not depend on the active malevolence of individual men....(we must) subvert the structures of dominance by challenging standard grading practices, administrative hierarchies, and whatever practices clearly support relations of dominance/submission...." (Noddings,1989, pp. 234-235). In her later work, *The Challenge to Care in Schools*, Noddings describes in rich detail the sort of

"subversive" actions she envisions to make schools a place of care, respect, and a place where students are empowered equally.

Jean Baker Miller exhorts women to bring our experiences and perspectives on power to the public sphere. "Women can bring more power to power by using it when needed and not using it as a poor substitute for other things--like cooperation. We can then begin to open up closed assumptions. The goal is...a new integration of the whole area of effective power...." (Baker, 1976, p. 118). She continues to also warn women that as we seek "real" power, we will need to confront conflict without fear. This is not particularly helpful for women who are suffering pain, humiliation, and thwarted lives as recipients of male power in the form of sexual harassment.

Houston thinks that "I think it is unlikely that we shall learn about sexual politics in school" although she clearly articulates the necessity of such if women are to escape our position of "powerlessness"(Houston, 1981, p. 27). Her pessimism is based on the view that our powerlessness is inherent in the "compulsory heterosexuality" imposed on women. Marilyn Frye expounds on the power structure of compulsory heterosexuality which keeps women powerless. "For females to be subordinated and subjugated to males on a global scale, and for males to organize themselves and each other as they do, billion of female individuals...must be reduced to more-or-less willing toleration of subordination and servitude to men. The primary sites of this reduction are the sites of heterosexual relation and encounter....The secondary sites of the forced female embodiment of subordination are the sites of the ritual preparations of girls and women for heterosexual intercourse, relations or attachments...."(Frye, in Jagger & Rothenberg, 1993, p. 493). These are, indeed, precisely the sites giving rise to the actions now being defined as sexual harassment. The focus on sexual harassment may allow, even mandate, that schools **do** examine sexual politics.

Frye, reviewing MacKinnon's work, appreciates MacKinnon's optimistic vision of anti-discrimination law having the ability to "eliminate the legal supports for male supremacy", but maintains considerable doubt that "any man-made law" will in fact, "overturn the systematic subordination of women" (Frye, 1992, pp. 96-97). So too, I may be overly optimistic to suppose that an examination of sexual harassment can be an opportunity to honestly address issues of male dominance within enforced heterosexuality which form the basis for the power inequities upon which sexual harassment depends. Still, such an

exploration might examine a variety of areas within educational framework such as curriculum, teacher development, gender inequities in administration regarding both personnel and policy, teacher-student interactions, and the very structure of schools.

These are all areas in need of further review as they are components of a system which, in its entirety, reflect the male dominance of the larger culture, and as such, continue to obstruct a re-formation of the construct of power. For educators to enter into the field of sexual politics is not new; sexual politics has always played a large role in the educational system. For educators to honestly and forthrightly examine sexual politics and their influence will be new--and rather long overdue. We who purpose to embark on such examination are not creating any sexual politics, just exposing them. This task, I envision, must be done by women.
p. 112).

That compulsory heterosexuality is the root cause of our powerlessness becomes increasingly evident as we examine sexual harassment in schools. I had been meeting with a group of seventh grade girls about sexual harassment and how they might resist or withdraw their consent. I really believed we, as a group, were making progress. Members could identify the sorts of actions which made them uncomfortable, and could propose viable ways of confrontation with harassers. At the end of one group session, a student commented that "In here, we're so strong--so sure of ourselves. But when we get back to class, we don't do the things we plan in here." Before I could comment, Whitney summed up succinctly and poignantly, "Yeah, because you know, you have to be careful. I mean, you still have to have somebody to dance with."